

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Carl L Nicolet v Brinks Inc**

Docket No. **284861**

L.C. No. **06-620467-CD**

Brian K. Zahra, Judge, acting under MCR 7.211(E)(2), orders:

The motion to strike portions of appellant's brief is GRANTED and appellant's brief is STRICKEN in its entirety. The brief is stricken because it includes statements of fact and appendices that impermissibly expand the record on appeal. The statements of fact reference deposition transcript pages that were not filed with the trial court clerk and the brief appendix includes deposition transcript pages and exhibits that were not filed with the trial court clerk. Deposition transcript pages and exhibits that were not filed in the trial court and available to the trial court for its decision are not part of the record and cannot be considered on appeal. See MCR 2.302(H)(3), MCR 7.210(A)(1), and *Coburn v Coburn*, 230 Mich App 118, 122-123; 583 NW2d 490 (1998), rev'd on other grounds, 459 Mich 874, 875 (1998). Appellant's brief shall be considered timely if a replacement brief is filed within 21 days after the Clerk's certification of this order.

Because appellant's brief has been stricken, appellees' brief and appellant's reply brief are also STRICKEN. Replacements for these briefs may be filed in accordance with the court rules after appellant's brief is filed.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

November 26, 2008
Date

Sandra Schultz Mengel
Chief Clerk